

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal No. 18-363 (FAB)

VÍCTOR NATAL-RIVERA,

Defendant.

ORDER

Pursuant to the Fourth Amendment of the United States Constitution, defendant Víctor Natal-Rivera ("Natal") moved to suppress evidence seized by the Puerto Rico Police Department. (Docket No. 20.) The Court referred Natal's motion to suppress to Magistrate Judge Camille Vélez-Rivé for a report and recommendation ("R & R"). The magistrate judge denied the motion to suppress because Natal failed to attach an "affidavit or document setting forth or evidencing facts on which the motion is based" in contravention of Local Rule 147(a) ("Rule 147(a)"). (Docket No. 23.) Natal objected to the R & R, asserting that "the facts were based on the affidavit filed by the investigating agent." (Docket No. 24 at p. 1.)

This Court rejects the R & R because Rule 147(a) is inapplicable. Rule 147(a) pertains to dispositive motions; it provides that "[a]ffidavits and other documents setting forth or

evidencing facts on which the motion is based shall be filed with the motion." Loc. R. 147(a). Natal's motion to suppress seeks the exclusion of evidence, the disposition of which does not determine the outcome of this criminal action. Consequently, the R & R is misguided because Natal's motion to suppress is not dispositive within the meaning of Rule 147(a).

The submission of an affidavit in conjunction with a motion to suppress is permissive, not mandatory, pursuant to Federal Rule of Criminal Procedure 47(a) ("Rule 47"). Fed. R. Crim. P. 47(a). Rule 47 states that a "motion **may** be supported by affidavit." Id. (emphasis added); see United States v. Matías-Maestres, 738 F. Supp. 2d 281, 285 (D.P.R. 2010) (Besosa, J.) (holding that the "government incorrectly claims that [the defendant's] affidavit is necessary to file a motion to suppress properly"). Accordingly, this Court rejects the R & R, and refers this matter back to Magistrate Judge Vélez-Rivé to hold a hearing and for an R & R that is consistent with this Order.

The jury trial scheduled to commence on August 1, 2018 is **VACATED**.

IT IS SO ORDERED.

San Juan, Puerto Rico, July 30, 2018.

s/ Francisco A. Besosa
FRANCISCO A. BESOSA
UNITED STATES DISTRICT JUDGE